Tenaga Nasional Bhd v Majlis Mesyuarat Kerajaan Negeri, Negeri Sembilan & Ors

HIGH COURT (SEREMBAN) — APPLICATION FOR JUDICIAL REVIEW NO 25–7–06 OF 2021
AZIZUL AZMI ADNAN J
31 AUGUST 2022

Administrative Law — Judicial review — Application for — Tenaga Nasional Bhd installed power transmission lines across fifth respondent's land — Land administrator awarded compensation to fifth respondent pursuant to Electricity Supply Act 1990 — Majlis Kerajaan Negeri and State Government imposed late payment interest on compensation paid by Tenaga Nasional Bhd — Application for judicial review to quash award of late payment interest — Whether decision to impose late payment interest ultra vires Electricity Supply Act 1990 — Whether delay in making payment of compensation was attributable to Tenaga Nasional Bhd — Whether Tenaga Nasional Bhd was liable to pay compensation when there was no determination of compensation by land administrator — Whether decision was unreasonable in Wednesbury sense — Whether decision ought to be quashed — Electricity Supply Act 1990 ss 11(2), (6) & 16(1), (2)

The applicant in the present case was the national electricity utility company known as Tenaga Nasional Bhd. The applicant had installed power transmission lines across a portion of land ('the land') belonging to a company known as Lambang Kelana Sdn Bhd ('the fifth respondent'). Initially, the applicant was not aware that the installation of the power transmission lines would affect the said land but upon being notified by the fifth respondent, the applicant had issued notice pursuant to s 11(2) of the Electricity Supply Act 1990 ('the said notice'). Despite the issuance of the said notice in year 2007, the land administrator ('the fourth respondent') had only conducted the enquiry pursuant to s 11(6) of the Electricity Supply Act 1990 on 5 September 2019 and subsequently on 17 July 2020 the fourth respondent determined that the sum payable as compensation was RM2,105,335. The delay in the determination of the compensation was principally due to the fifth respondent's challenge to the legality of the applicant's action in issuing the said notice after the applicant had entered the land. The total amount of compensation awarded by the fourth respondent was paid by the applicant to the fifth respondent, but the fifth respondent had filed an appeal against the said decision to the Majlis Mesyuarat Kerajaan Negeri of Negeri Sembilan ('the first respondent') and/or the State Government of Negeri Sembilan ('the third respondent'). The first respondent and the third respondent had allowed the appeal and imposed late payment interest amounting to RM1,369,332.95 on the applicant in relation to the compensation paid by the applicant to the fifth

respondent. The applicant then filed the present application for judicial review to quash the said decision premised on, inter alia, the following grounds: (a) the said decision ultra vires the Electricity Supply Act 1990 because the said statute and the regulations made under it did not provide the ability to impose late payment charges, whether by the fourth respondent under s 16(1) or on appeal to the first respondent under s 16(2) of the Electricity Supply Act 1990; and (b) the first respondent and the third respondent had not taken into account material considerations in arriving at its decision to impose late payment interest charges, as such, the decision was tainted with unreasonableness in the *Wednesbury* sense.

Held, allowing the application for judicial review with costs:

(1) The susceptibility to judicial review of a decision made by a district land administrator under s 16(1) of the Electricity Supply Act 1990 or by the State Authority under s 16(2) was well established. Eventhough s 16(2) provided that the decision of the State Authority was final, and that accordingly there lay no appeal to the court against such decision, this provision did not preclude the court from exercising its supervisory jurisdiction of judicial review (see para 26).

(2) The right to compensation where a wayleave had been created was a right that had been created by statute by virtue of the Electricity Supply Act 1990, as such, the universe of available remedies must necessarily only be contained within the four corners of the Electricity Supply Act 1990. The court found that there was no power conferred by the Electricity Supply Act 1990 to award late payment interest. The purpose of compensation under the Electricity Supply Act 1990 was to compensate for the disturbance, damage or disability over the land that had been suffered by the proprietor. The Electricity Supply Act 1990 did not permit compensation for the loss of use of money by reason of the proprietor having been kept out of funds. Therefore, the late payment interest awarded by the first respondent and third respondent to the fifth respondent ultra vires the Electricity Supply Act 1990 (see paras 30–31, 36, 40–41 & 49).

(3) The court was of the view that no reasonable decision-maker could have arrived at the decision to impose late payment interest for the period of 13 years from the date on which the applicant entered upon the land and the date when it paid the compensation sum, when the applicant had not materially contributed to the delay that the fifth respondent suffered in receiving its compensation. A majority portion of the delay was attributable to the fifth respondent's own decision to challenge the validity of the wayleave, while the bulk of the remaining period was due to the inaction of the fourth respondent. Accordingly, even if the first

respondent was seised of the power and authority to impose late payment interest, its decision to do so was an irrational one (see paras 42, 45 & 49).

(4) There was a second reason why the decision of the first respondent was unreasonable in the *Wednesbury* sense: for as long as the compensation sum had not yet been ascertained, the applicant could not have made payment to the fifth respondent even if it had wanted to. As such the applicant could not have been liable to late payment interest for any period prior to the determination of the compensation sum by the land administrator (the fourth respondent) (see paras 46 & 48–49).

[Bahasa Malaysia summary

Pemohon dalam kes ini ialah syarikat utiliti elektrik nasional yang dikenali sebagai Tenaga Nasional Bhd. Pemohon telah memasang talian penghantaran kuasa merentasi sebahagian tanah ('tanah tersebut') milik sebuah syarikat yang dikenali sebagai Lambang Kelana Sdn Bhd ('responden kelima'). Pada mulanya, pemohon tidak sedar bahawa pemasangan talian penghantaran kuasa tersebut akan melibatkan tanah tersebut tetapi apabila dimaklumkan oleh responden kelima, pemohon telah mengeluarkan notis menurut s 11(2) Akta Bekalan Elektrik 1990 ('notis tersebut'). Walaupun notis tersebut dikeluarkan pada tahun 2007, pentadbir tanah ('responden keempat') hanya menjalankan siasatan menurut s 11(6) Akta Bekalan Elektrik 1990 pada 5 September 2019 dan seterusnya pada 17 Julai 2020, responden keempat menentukan bahawa jumlah yang perlu dibayar sebagai pampasan ialah sebanyak RM2,105,335. Kelewatan dalam penentuan pampasan adalah disebabkan terutamanya oleh cabaran responden kelima mengenai kesahihan tindakan pemohon dalam mengeluarkan notis tersebut selepas pemohon memasuki tanah tersebut. Jumlah pampasan yang dibenarkan oleh responden keempat telah dibayar oleh pemohon kepada responden kelima, tetapi responden kelima telah memfailkan rayuan terhadap keputusan tersebut kepada Majlis Mesyuarat Kerajaan Negeri, Negeri Sembilan ('responden pertama') dan/atau Kerajaan Negeri Sembilan ('responden ketiga'). Responden pertama dan responden ketiga telah membenarkan rayuan tersebut dan mengenakan faedah pembayaran lewat berjumlah RM1,369,332.95 ke atas pemohon berhubung pampasan yang dibayar oleh pemohon kepada responden kelima. Pemohon kemudiannya memfailkan permohonan semasa untuk semakan kehakiman untuk membatalkan keputusan tersebut berdasarkan, antara lain, alasan-alasan berikut: (a) keputusan tersebut ultra vires Akta Bekalan Elektrik 1990 kerana akta tersebut dan peraturan-peraturan yang dibuat di bawahnya tidak memperuntukkan hak untuk mengenakan caj pembayaran lewat, sama ada oleh responden keempat di bawah s 16(1) atau kepada responden pertama semasa rayuan di bawah s 16(2) Akta Bekalan Elektrik 1990; dan (b) responden pertama dan responden ketiga tidak mengambil kira pertimbangan material dalam membuat keputusan untuk mengenakan caj faedah pembayaran lewat, oleh itu, keputusan tersebut adalah tidak

munasabah dalam pengertian *Wednesbury*. A

Diputuskan, membenarkan permohonan semakan kehakiman dengan kos:

(1) Keterikatan kepada semakan kehakiman bagi keputusan yang dibuat oleh pentadbir tanah daerah di bawah s 16(1) Akta Bekalan Elektrik 1990 atau oleh Pihak Berkuasa Negeri di bawah s 16(2) sudah menjadi undang-undang yang mantap. Walaupun s 16(2) memperuntukkan bahawa keputusan Pihak Berkuasa Negeri adalah muktamad, dan oleh itu tiada rayuan boleh dibuat kepada mahkamah terhadap keputusan tersebut, peruntukan ini tidak menghalang mahkamah daripada melaksanakan bidang kuasa penyeliaan semakan kehakiman (lihat perenggan 26). B C

(2) Hak untuk pampasan apabila kebenaran laluan telah dibuat adalah hak yang telah diwujudkan oleh statut berdasarkan Akta Bekalan Elektrik 1990, oleh itu, keseluruhan remedi yang tersedia semestinya hanya terkandung dalam Akta Bekalan Elektrik 1990 sahaja. Mahkamah mendapati tiada kuasa yang diberikan oleh Akta Bekalan Elektrik 1990 untuk memberikan faedah pembayaran lewat. Tujuan pampasan di bawah Akta Bekalan Elektrik 1990 adalah untuk mengimbangi gangguan, kerosakan atau hilang upaya ke atas tanah yang telah dialami oleh pemilik. Akta Bekalan Elektrik 1990 tidak membenarkan pampasan bagi kehilangan penggunaan wang kerana pemilik telah dihalang daripada mendapat dana. Oleh itu, faedah pembayaran lewat yang diberikan oleh responden pertama dan responden ketiga kepada responden kelima adalah ultra vires Akta Bekalan Elektrik 1990 (lihat perenggan 30–31, 36, 40–41 & 49). D E F

(3) Mahkamah berpendapat bahawa tiada pembuat keputusan yang munasabah akan membuat keputusan untuk mengenakan faedah pembayaran lewat untuk tempoh 13 tahun dari tarikh pemohon memasuki tanah dan tarikh ia membayar jumlah pampasan, apabila pemohon tidak menyumbang secara material kepada kelewatan yang dialami oleh responden kelima dalam menerima pampasannya. Sebahagian besar kelewatan tersebut adalah disebabkan oleh keputusan responden kelima sendiri untuk mencabar kesahihan kebenaran laluan tersebut, manakala sebahagian besar daripada baki tempoh tersebut adalah disebabkan oleh kegagalan responden keempat untuk bertindak. Sehubungan itu, jika pun responden pertama mempunyai kuasa dan budibicara untuk mengenakan faedah pembayaran lewat tersebut, keputusannya untuk berbuat demikian adalah tidak rasional (lihat perenggan 42, 45 & 49). G H I

(4) Terdapat sebab kedua mengapa keputusan responden pertama adalah tidak munasabah dalam pengertian *Wednesbury*: selagi jumlah pampasan belum ditentukan, pemohon tidak boleh membuat pembayaran kepada

responden kelima walaupun ia mahu membuat pembayaran tersebut. Oleh itu, pemohon tidak boleh bertanggungjawab terhadap faedah pembayaran lewat untuk apa-apa tempoh sebelum penentuan jumlah pampasan oleh pentadbir tanah (responden keempat) (lihat perenggan 46 & 48–49).]

Cases referred to

Bandar Nusajaya Development Sdn Bhd v Tenaga Nasional Bhd [2014] 4 MLJ 847; [2014] 7 CLJ 1006, CA (refd)
Bungsar Hill Holdings Sdn Bhd v Damansara Realty Bhd [2019] MLJU 222; [2019] 4 CLJ 429, FC (refd)
Lim Kar Bee v Abdul Latif bin Ismail [1978] 1 MLJ 109, FC (refd)
Parkson Corp Sdn Bhd v Fazaruddin bin Ibrahim [2002] 4 MLJ 122; [2002] 4 CLJ 18, CA (refd)
Salak Land Development Sdn Bhd v Pentadbir Tanah Kuala Langat & Ors [2015] 3 MLJ 487; [2015] 4 CLJ 506, CA (refd)
Zen Courts Sdn Bhd v Bukit Jalil Development Sdn Bhd & Ors [2019] MLJU 1308, HC (refd)

Legislation referred to

Electricity Supply Act 1990 ss 11, 11(1), (2), (6), 16, 16(1), (2)
Land Acquisition Act 1960
Trade Descriptions Act 1972 (repealed by Trade Descriptions Act 2011) s 16

David Mathew (with David Ng Yew Kiat and Chong Jen Hui) (Steven Thiru & Sudhar Partnership) for the applicant.
Muhammad Fairuz Iskandar bin Zainal Abidin (Negeri Sembilan State Legal Advisor) for the first, second, third and fourth respondents.
Joseph Yeo (with Khoo Kah Yong) (Joseph Yeo) for the fifth respondent.

Azizul Azmi Adnan J:

INTRODUCTION

[1] The applicant in this case, Tenaga Nasional Bhd ('TNB'), is the national electricity utility company. It applied for judicial review to quash the decision of the Majlis Mesyuarat Kerajaan Negeri of Negeri Sembilan ('the first respondent') and/or the state government of Negeri Sembilan ('the third respondent') to impose late payment interest on TNB in connection with compensation paid by TNB to the fifth respondent, Lambang Kelana Sdn Bhd ('Lambang Kelana'). This compensation was paid by TNB pursuant to the provisions of the Electricity Supply Act 1990, because TNB had installed power transmission lines across a portion of land belonging to Lambang Kelana located in Bukit Galla on the outskirts of Seremban.

[2] I allowed the application, on the basis (among others) that:

(a) the Electricity Supply Act 1990 did not empower the Majlis Mesyuarat Kerajaan Negeri to award late payment interest; and

(b) even if there was the power to do so, the decision to award late payment interest on TNB was unreasonable in the *Wednesbury* sense, as at no point was there any delay that could reasonably be attributable to TNB.

[3] These reasons are explained in detail below.

MATERIAL BACKGROUND FACTS

The initial wayleave procedure

[4] In or about 2004, TNB commenced the procedure under s 11 of the Electricity Supply Act 1990 to obtain a wayleave in order to construct an electricity supply line from the Jimah Power Station in Port Dickson to a sub-station in Lenggeng. The alignment of the power lines was to cross the Bukit Galla forest reserve located north of Seremban.

[5] TNB engaged a licensed surveyor to undertake a survey of the affected lands and to propose an alignment plan. This plan was devised based on data obtained from the Department of Survey and Mapping (Jabatan Ukur dan Permetaan, frequently referred to by its initials, 'JUPEM'). The data obtained from JUPEM did not indicate that the proposed alignment would bisect lands owned by Lambang Kelana.

[6] The requisite notice was duly given to the Negeri Sembilan Department of Forestry. This notice, among others, informed the Department of Forestry that a swathe of land 50 metres wide would be cleared for the purposes of the transmission lines, and that the total affected land area would be 20.902 hectres. Subsequent correspondence between the Department of Forestry and TNB did not reveal any reason for TNB to believe that the affected lands were anything other than forest reserve lands or that any portion of it had been alienated into private hands.

[7] On 29 December 2006, TNB paid compensation of RM889,790 to the Department of Forestry pursuant to s 16 of the Electricity Supply Act 1990. Thereafter, land clearing works commenced sometime in 2007.

Lambang Kelana's land

[8] On 11 June 2007, the solicitors of Lambang Kelana wrote to TNB informing it that it had trespassed over lands belonging to Lambang Kelana.

TNB undertook investigations and discovered that the transmission lines would in fact cut across leasehold land belonging to Lambang Kelana. The affected portion of the land measured 2.602 hectares.

[9] According to the evidence before the court, this was the first time that TNB was first made aware that the transmission lines would cross over lands that were not forest reserve and that land belonging to Lambang Kelana was affected.

[10] TNB proceeded to issue to Lambang Kelana the statutory notice prescribed pursuant to s 11(2) of the Electricity Supply Act 1990. This notice was issued on 10 July 2007.

Enquiries by the District Land Administrator

[11] Under s 11(6) of the Electricity Supply Act 1990, if an objection has been recorded to a notice issued under s 11(2), the District Land Administrator must hold an enquiry giving all parties the right to be heard. The District Land Administrator has the power, following the enquiry, to authorise or to prohibit the proposal for the wayleave. He or she must also assess the compensation that is to be paid by TNB.

[12] Between 2 August 2007 and 29 February 2008, the District Land Administrator for Seremban ('the fourth respondent') issued four notices of inquiry. Although attempts were made in the course of the subsequent enquiries to resolve the differences between the parties on the amount of compensation payable, TNB and Lambang Kelana could not come to an agreement.

The trespass suit

[13] Matters come to head on 3 April 2008, when Lambang Kelana commenced a suit against TNB for trespass. Among the arguments raised were the contention that the s 11(2) notice issued by TNB on 10 July 2007 to Lambang Kelana had been issued after it had entered onto Lambang Kelana's land, whereas s 11 specifically contemplated that the notice ought to be given before doing so.

[14] The trespass suit was dismissed at first instance and on appeal. Leave to appeal to the Federal Court was denied on 21 January 2015.

[15] It may be observed that, for the period of approximately seven years between 2007 until 21 January 2015, no material progress was made on the determination of the compensation payable, due principally to Lambang

Kelana's challenge on the legality of TNB's actions. In the trespass suit, it was not the amount of compensation payable that was the subject of the dispute, but the fact that notice had not been given to Lambang Kelana prior to TNB entering its land. Lambang Kelana contended that, had it received the notice earlier, it would have objected so that the transmission line would be laid in an alternative alignment that would not have affected its land.

Subsequent enquiry by the Land Administrator

[16] Having lost its trespass suit, Lambang Kelana then wrote the Land Administrator for Seremban requesting for the latter to complete the enquiries that had been commenced in 2007 in order to determine the amount of compensation payable by TNB.

[17] Between October 2015 and December 2018, solicitors for Lambang Kelana wrote to the Land Administrator for Seremban no less than seven times requesting for the enquiry to be held. No response was forthcoming from the fourth respondent.

[18] Eventually Lambang Kelana commenced an originating summons action to compel the Seremban Land Administrator to conduct an enquiry under s 11(6) of the Electricity Supply Act 1990 in order to determine the compensation payable to Lambang Kelana.

[19] A consent order was recorded on 3 July 2019. On 5 September 2019, the enquiry was duly held, and on 17 July 2020 the fourth respondent determined that the sum payable as compensation was RM2,105,335. Full payment of the compensation sum was made on 24 December 2020.

[20] I pause the narrative here to observe that the was a delay of more than three years, due to the inaction on the part of the Land Administrator. Eventually, when the compensation sum was finally determined, TNB paid the compensation in a reasonably prompt manner. It may also be observed that, prior to 17 July 2020, TNB could not have paid the compensation sum to Lambang Kelana even if it had wanted to, because the amount had not yet been determined by the Land Administrator.

The appeal to the Majlis Mesyuarat Kerajaan Negeri

[21] Under s 16(2) of the Electricity Supply Act 1990, a person who is dissatisfied with the decision of the District Land Administrator may appeal to the State Authority.

[22] Unbeknown to TNB, Lambang Kelana appealed against the decision of the fourth respondent. In a letter to TNB by the Land Administrator of Seremban, TNB was informed that the Majlis Mesyuarat Kerajaan Negeri of Negeri Sembilan had allowed Lambang Kelana's appeal, and had imposed late payment interest charges on TNB, at a rate of 5%pa for the period 1 January 2007 to 31 December 2020. The total interest amounted to RM1,369,332.95, an amount that was more than 65% of the principal amount of the compensation that had been paid.

[23] No notice was given to TNB regarding the appeal. The decision by the Majlis was thus made without the benefit of any representation or submission from TNB.

TNB'S APPLICATION FOR JUDICIAL REVIEW

[24] Four grounds were advanced to challenge the decision of the Majlis Mesyuarat Kerajaan Negeri, Negeri Sembilan, to impose late payment interest charges. They were:

(a) the Electricity Supply Act 1990 and the regulations made under it did not provide the ability to impose late payment charges, whether by the Land Administrator under s 16(1) or on appeal to the Majlis under s 16(2). It was this contended that the decision by the Majlis was thus ultra vires the Electricity Supply Act 1990;

(b) it was argued that the Majlis and/or the state government of Negeri Sembilan had not taken into account material considerations in arriving at its decision to impose late payment interest charges. Accordingly, argued counsel for TNB, the decision was tainted with unreasonableness in the *Wednesbury* sense;

(c) the Majlis and/or the state government did not give TNB an opportunity to be heard in the appeal, and thus — according to counsel — there was a breach of natural justice; and

(d) the Majlis and/or the state government had failed to provide any grounds or reasons for its decision to impose late payment interest charges on TNB.

[25] I upheld the first two grounds of challenge. Having done so, I considered that it no longer became necessary to address the two further grounds.

ANALYSIS AND DECISION

Justiciability

[26] The susceptibility to judicial review of a decision made by a District Land Administrator under s 16(1) of the Electricity Supply Act 1990 or by the State Authority under s 16(2) is well established. Eventhough s 16(2) provides that the decision of the State Authority is final, and that accordingly there lies no appeal to the court against such decision, this provision does not preclude the court from exercising its supervisory jurisdiction of judicial review. In *Salak Land Development Sdn Bhd v Pentadbir Tanah Kuala Langat & Ors* [2015] 3 MLJ 487; [2015] 4 CLJ 506, the Court of Appeal in construing s 16 stated as follows:

> [21] Although the decision of the State Authority is final, the appellant has a right to resort to the supervisory jurisdiction of the court to examine the decision of the State Authority as to whether there is illegality, procedural impropriety or irrationality.

[27] In the case of *Bandar Nusajaya Development Sdn Bhd v Tenaga Nasional Bhd* [2014] 4 MLJ 847; [2014] 7 CLJ 1006, the Court of Appeal affirmed the decision of the High Court, which had quashed a decision of the State Authority that had been made in excess of the powers conferred upon it by s 16. In that case, the State Authority had pronounced upon an appeal under s 16(2), but purported to review its own decision. The Court of Appeal found that the State Authority had no power to review its own decision once it had made its first determination on the appeal from the Land Administrator.

[28] This case further illustrates the point that, where the State Authority purports to exercise a power in excess of that conferred upon it by statute, this decision is liable to review by the courts in exercising its supervisory jurisdiction.

[29] On the facts of the present case, this was precisely the contention of TNB: that the Majlis Mesyuarat Kerajaan Negeri of Negeri Sembilan was not seized of the power or jurisdiction to award late payment interests. This point is addressed in the following paragraphs.

Ultra vires

[30] In my judgment, the State Authority cannot validly award late payment interest under the Electricity Supply Act 1990 when no power has been conferred by statute to it to do so.

[31] Where a right or cause of action did not exist at common law, and is wholly a creature of statute, the only remedies available in respect of any breach of the relevant statutory provision or in respect of such rights or cause of action must be those that have been specifically provided for in the relevant statute. Thus, because the right to compensation where a wayleave has been created is a right that has been created by statute by virtue of the Electricity Supply Act 1990, the universe of available remedies must necessarily only be contained within the four corners of the Electricity Supply Act 1990.

[32] The Court of Appeal case of *Parkson Corp Sdn Bhd v Fazaruddin bin Ibrahim* [2002] 4 MLJ 122; [2002] 4 CLJ 18 provides an illustration of this principle. This case involved a trade description order granted under the Trade Descriptions Act 1972 in favour of the respondent in the action. The appellant tried to have the trade description order set aside, but failed. It then appealed but later withdrew its appeal. Subsequently, the respondent made an application for assessment of damages and an account of profits, which the High Court allowed. The High Court directed for assessment before the registrar of the court. The appellant appealed to the Court of Appeal, asserting that the High Court ought not have directed the assessment of damages.

[33] Gopal Sri Ram JCA (as he then was), in delivering the judgment of the court, considered s 16 of the Trade Descriptions Act 1972, which provided for the right of a proprietor or user of a trade mark to apply to the High Court for a trade description order:

> This provision is new. There is no right at common law for a party complaining that his mark or other device or trade description has been infringed to approach the court either ex parte or inter partes to obtain an order such as that provided by s 16. Any such complaint to be actionable must satisfy the elements of the well-known tort of passing-off and related torts, such as malicious falsehood. That the remedy provided by s 16 is novel is made patently clear by Parliament in the preamble of the Act, which in its material part reads:
>
> > An Act to consolidate and amend the laws relating to merchandise marks with *new provisions* prohibiting misdescription of goods ... and for related purposes. (Emphasis added.)
>
> The present case accordingly falls to be covered by the established principle, which deals with the consequences of Parliament providing novel or new remedy. The principle is ancient. It has been adverted to in numerous cases. We do not propose to go through them all here. Suffice that we mention the seminal cases. Of these the first is *Pasmore v Oswaldtwistle Urban District Council* [1898] AC 387, where (at p 394) the Earl of Halsbury LC said:
>
> > The principle that where a specific remedy is given by a statute, it thereby deprives the person who insists upon a remedy or any other form of remedy than that given by the statute, is one which is very familiar and which runs through the law.

The second is *Wilkinson v Barking Corporation* [1948] 1 KB 721, where at p 724, we find Asquith LJ saying this:

> It is undoubtedly good law that where a statute creates a right and, in plain language, gives a specific remedy or appoints a specific tribunal for its enforcement, a party seeking to enforce the right must resort to that remedy or that tribunal, and not to others.

These cases have been applied repeatedly by the apex courts of this country. See for example, *Tan Chye Choo & Ors v Chong Kew Moi* [1970] 1 MLJ 1. See also *Metal Industry Employees Union v Registrar of Trade Unions & Ors* [1976] 1 MLJ 220.

Applying this settled principle to the present case, it is clear that an applicant moving the court under s 16 is only entitled to the specific remedy provided by it.

If Parliament had wished to confer jurisdiction upon a court making an order under s 16 to also award damages, it would had said so expressly. It is therefore plain what Parliament intended was to only criminally punish the infringer of merchandising marks and the perpetrator of any other act or omission specifically proscribed by the Act.

[34] In the case of *Bungsar Hill Holdings Sdn Bhd v Damansara Realty Bhd* [2019] MLJU 222; [2019] 4 CLJ 429, the parties were in a dispute on the entitlement to compensation payment for a compulsory acquisition pursuant to the Land Acquisition Act 1960. Pending the resolution of the dispute, the Land Administrator in that case paid the compensation sum into court. The entitlement to the compensation sum was eventually resolved in favour of Bungsar Hill, following which it applied for the release of the compensation sum. It also claimed interest against Damansara Realty, on the basis that Bungsar Hill had been deprived of earlier use of the compensation sum by reason of the act by Damansara Realty in disputing its entitlement to the compensation sum. There is, of course, no provision in the Land Acquisition Act 1960 that entitles interest to be claimed from a person who disputes the right of another person to receive compensation following a compulsory acquisition.

[35] The Federal Court found that Bungsar Hill was not entitled to claim interest on the compensation sum from Damansara Realty, holding as follows:

> [29] One acceptable principle of interpretation of a statute is that, when a statute provides for a specific remedy, it necessarily excludes any other remedy not provided for by that statute. The House of Lords' decision in *Pasmore v The Oswaldtwistle Urban District Council* [1898] AC 387 had often be referred to on this legal position. In the speech of the Earl of Halsbury LC he said:
>
> > The principle that where a specific remedy is given by a statute, it thereby deprives the person who insists upon a remedy or any other form of remedy than that given by the statute, is one which is very familiar and which runs through the law.

[36] In the present instance, the entitlement of Lambang Kelana was only to receive compensation for the loss of use of the affected portion of the land. This was the sole remedy that was provided for under the Electricity Supply Act 1990. On the two authorities referred to above — both of which are binding on this court — I found that the Majlis Mesyuarat Kerajaan Negeri did not have the power to award interest to Lambang Kelana, and that accordingly the purported award of interest was ultra vires the Electricity Supply Act 1990. The award of interest was therefore quashed.

[37] Learned counsel for Lambang Kelana argued that the award of interest was nothing more than an award of compensation, and because the original award by the Land Administrator did not take into account the lapse of some 13 years between the issuance of the statutory notice under s 11(2), it was appropriate for the Majlis to determine further compensation to account for the lapse. That the compensation was computed in the form of an award of interest — argued counsel — was merely a means of computing an amount that constituted adequate compensation.

[38] I was unable to agree with this argument.

[39] The purpose for the compensation payable under s 11(1) can be ascertained from the plain words of the provision, which reads as follows:

> 11 Power to enter on land for purposes of construction.
>
> (1) Subject to as herein after provided, whenever it is necessary so to do for the purpose of installing any system of distribution of electricity under this Act, a licensee may lay, place or carry on, under or over any land, other than State land, such posts and other equipment as may be necessary or proper for the purposes of the licensed installation, as the case may be, and may take such other action as may be necessary to render the installation safe and efficient, paying full compensation in accordance with s 16 to all persons interested for any *disturbance, damage or disability* that may be caused thereby and such compensation may include an annual payment for land used for the purpose of the posts or other equipment. (Emphasis added.)

[40] The purpose of the compensation payment is to account for the disturbance, damage or disability caused to the property in question, by reason of the installation by TNB of electricity distribution equipment. By contrast, the rationale for an award of interest is compensate a party from having been kept out of funds. This is has been explained by Raja Azlan Shah FCJ in *Lim Kar Bee v Abdul Latif bin Ismail* [1978] 1 MLJ 109 in the following terms:

> The basis of an award of interest is that the defendant has kept the plaintiff out of his money and has had the use of it himself, so he ought to compensate the plaintiff accordingly.

[41] It is thus clear that the Electricity Supply Act 1990 only empowers the Land Administrator and the State Authority to determine compensation for the disturbance, damage or disability over the land that has been suffered by the proprietor. It does not permit compensation for the loss of use of the money by reason of having been kept out of funds.

Irrationality

[42] Even if the Majlis Mesyuarat Kerajaan Negeri was possessed of the power to award late payment interest to Lambang Kelana, its decision was an irrational one, for the following reasons:

(a) the fact that Lambang Kelana received its compensation some 13 years after TNB entered into its land was in no meaningful way attributable to any act or omission of TNB; and

(b) in any event, for as long as the compensation sum has not yet been ascertained, TNB could not have made payment to Lambang Kelana even if it had wanted to. As such TNB could not have been liable to late payment interest for any period prior to the determination of the compensation sum by the Land Administrator.

[43] These points are addressed in turn in the following paragraphs.

Delay not attributable to TNB

[44] It will be recalled that late payment interest was awarded to Lambang Kelana for a period of 13 years beginning 1 January 2007 until 31 December 2020. The determination of the compensation sum was made by Land Administrator on 17 July 2020, and payment was effected on 24 December 2020. In my considered view, the delay in determining the compensation sum could in no meaningful way be attributed to any act or omission on the part of TNB:

(a) first off, TNB through no fault of its own had entered upon he land without knowing that it belonged to Lambang Kelana. The undisputed evidence showed that TNB has made all the necessary inquiries, and the information that it had received from JUPEM showed that the affected lands were all forest reserve. Clearly therefore, TNB ought not be liable for any delay in payment of the compensation sum caused by the fact that the records of a government department was not up to date and did not show Lambang Kelana's ownership of the subject land.

This point addresses the period beginning from TNB's initial entry upon the land (which was sometime in 2007) and the date on which it was informed of Lambang Kelana's interest (which was 11 June 2007);

(b) once TNB received the letter from Lambang Kelana's solicitors, it had acted expeditiously by issuing a first schedule notice on 10 July 2007. The Land Administrator then proceeded to issue a notice of enquiry. In fact, four notices of enquiry was issued over a period of some seven months, but the enquiry proceedings were never completed because Lambang Kelana decided to challenge the validity of TNB's first schedule notice by commencing the trespass suit on 3 April 2008. For as long as the trespass suit remained outstanding, there existed no good reason to proceed with the enquiry, as the trespass suit challenged TNB's very right to create the wayleave over the subject land.

The trespass suit was only finally determined on 12 January 2015, when Lambang Kelana's application for leave to appeal to the Federal Court was dismissed.

There was thus a lapse of a period of seven and a half years from the time that TNB became aware of Lambang Kelana's interest, when the compensation sum could not be determined. Here again, the delay was not due to TNB's actions, but was in fact attributable to Lambang Kelana's own decision to challenge the validity of the wayleave procedure;

(c) with its leave application dismissed, Lambang Kelana sought for the resumption of the enquiry proceedings, in order to determine the amount of compensation payable to it. For a period of over three years between October 2015 and December 2018, solicitors for Lambang Kelana wrote to the Land Administrator for Seremban no less than seven times requesting for the enquiry to be held. The letters were met only by a deafening silence. Not only was there no response from the fourth respondent, but there was not even an explanation in evidence before me as to why he had so abjectly and spectacularly failed to respond.

Only when he was sued by Lambang Kelana was the Seremban Land Administrator moved from his torpor. A consent order was recorded on 3 July 2019.

Beginning with the dismissal of the Federal Court leave application (on 25 January 2015) and the recording of the consent order (on 3 July 2019), there was a period of almost four and a half years before there was material progress on the enquiry proceedings. Here again, this delay was not the fault of TNB, but almost entirely attributable to the failure on the part of the Land Administrator to discharge his statutory duties; and

(d) once the compensation sum of RM2,105,335 was ascertained by the Land Administrator on 17 July 2020, payment was made by TNB in a reasonably prompt manner on 24 December 2020. I say reasonably prompt because a period of five months pales in comparison to the long delays that was attributable to the other parties in this case.

[45] Given the factual circumstances recited above, I was of the view that no reasonable decision-maker could have arrived at the decision to impose late payment interest for the period of 13 years from the date on which TNB entered upon the land and the date when it paid the compensation sum, when TNB had not materially contributed to the delay that Lambang Kelana suffered in receiving its compensation. A majority portion of the delay was attributable to Lambang Kelana's own decision to challenge the validity of the wayleave, while the bulk of the remaining period was due to the inaction of the fourth respondent. Accordingly, even if the Majlis Mesyuarat Kerajaan Negeri was seised of the power and authority to impose late payment interest, its decision to do so was an irrational one and was consequently quashed by this court.

Interest not payable until compensation sum ascertained

[46] There was a second reason why the decision of the Majlis was unreasonable in the *Wednesbury* sense: for as long as the compensation sum has not yet been ascertained, it would not have been possible for TNB to make the compensation payment. Indeed, TNB could not have effected payment even if it had wanted to. Put another way, the right of Lambang Kelana to receive the compensation sum was predicated on the Land Administrator having first ascertained the compensation sum. Unless and until this right was crystallised (by the ascertainment of the compensation sum), there was no question of Lambang Kelana having been kept out of funds. There was thus no entitlement to receive late payment interest for as long as the compensation sum was unascertained (assuming for the moment that late payment interest was payable in the first place under the Electricity Supply Act 1990).

[47] The case of *Zen Courts Sdn Bhd v Bukit Jalil Development Sdn Bhd & Ors* [2019] MLJU 1308 involved a winding up petition on just and equitable grounds. The court had earlier found that oppression was made out, and judgment on liability was pronounced on 27 March 2012, which required the second and third respondents to buy out the petitioner's shares in the first respondent. There were ensuing disputes in the valuation proceedings, such that the price for the shares to be bought out was only determined on 26 June 2019. The court found that there could not have been any liability for interest before this date, holding:

> In my view, interest should only run from the day the obligation to pay the principal sum was ascertained, which was when I determined the value of the buy-out shares on 26 June 2019. There cannot be an obligation to pay interest prior to the principal amount being ascertained: see *Re Bird Precision Bellows Ltd* [1984] Ch 658.

[48] I am of the view that similar principles to apply in the present instance. For as long as the compensation sum has not yet been determined, the

obligation to pay the compensation remains a contingent obligation, and no interest should accrue until the determination is made.

SUMMARY AND CONCLUSION

[49] In summary, I was of the view that the application for judicial ought be allowed because:

(a) there was no power conferred by the Electricity Supply Act 1990 to award late payment interest;

(b) the purpose of compensation under the Electricity Supply Act 1990 was to compensate for the disturbance, damage or disability over the land that has been suffered by the proprietor. The Electricity Supply Act 1990 does not permit compensation for the loss of use of money by reason of the proprietor having been kept out of funds; and

(c) even if the State Authority did have such power, its decision to award late payment interest against TNB was an irrational one because:

(i) the fact that Lambang Kelana received its compensation some 13 years after TNB entered into its land was in no meaningful way attributable to any act or omission of TNB; and

(ii) for as long as the compensation sum has not yet been ascertained, TNB could not have made payment to Lambang Kelana even if it had wanted to. As such TNB could not have been liable to late payment interest for any period prior to the determination of the compensation sum by the Land Administrator.

[50] Having arrived at these conclusions, I saw no necessity for the court to address the two additional grounds for judicial review. The application for judicial review was allowed with costs.

Application for judicial review allowed with costs.

Reported by Dzulqarnain Ab Fatar